Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1330

John Doe,

Petitioner,

v.

E. E. Pringle, D. E. Kelley, R. E. Lee, J. R. Carrigan, J. K. Groves, P. V. Hodges, and W. H. Erickson, individually and in their capacities as Justices of the Colorado Supreme Court,

Respondents.

FURTHER SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JONATHON B. CHASE
University of Colorado
School of Law
Boulder, CO 80309
(303) 492-8428
COUNSEL FOR PETITIONER

OF COUNSEL:
Albert T. Frantz
7180 West 14th Ave.
Englewood, Colorado

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Petitioner, pursuant to Rule 24 of the Supreme Court Rules, hereby files a Further Supplemental Brief In Support of his Petition For Writ of Certiorari in order to call the attention of the Court to the case of Ktsanes v. Underwood, 45 L.W. 2477 (7th Cir. March 23, 1977), the report of which was not available for inclusion in the Petition For Writ of Certiorari, docketed on March 26, 1977.

THE DECISION OF THE COURT OF APPEALS FOR THE TENTH CIRCUIT CONFLICTS WITH THE DECISION OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN KTSANES V. UNDERWOOD, 45 L.W. 2477 (March 23, 1977).

Counsel for Petitioner has not yet had an opportunity to read the full opinion in the case of Ktsanes v. Underwood, 45 L.W. 2477 (7th Cir. March 23, 1977), having received the abridged report contained in Law Week on the date of preparation of this Supplemental Brief. Because of the importance of the decision of Ktsanes to resolution of the issues presented in this Petition, and because the Petition is now at issue, Respondents' Brief In Opposition to Petition For Writ of Certiorari having been filed,* Petitioner has chosen to bring the Ktsanes decision to the Court's attention immediately.

The brief account of the Court's decision in Ktsanes indicates that it is in direct conflict with the decision of Judge Barrett, writing for the court below in the case at bar, in which Judge Barrett relied on In re Summers, 325 U.S. 561 (1945), in rejecting Petitioner's claim that denial of an application for admission, albeit an exercise of judicial power,

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* Because of some inexplicable delay in the mails, Petitioner has not yet received a copy of Respondents' Brief In Opposition to Petition For Writ of Certiorari.

is a quasi-administrative proceeding rather than a traditional judicial proceeding. Appendix A to the Petition For Writ Certiorari, at 33; see id. at 47 ("The action of the Colorado Court was judicial rather than administrative.") (Breitenstein, J., concurring in result). The decision in Ktsanes is, further, in direct support of the position asserted by Petitioner in his Petition for Writ of Certiorari, at 20-21.

In one respect the Ktsanes case is consistent with the decision of the Tenth Circuit in the case at bar. The court below did recognize that a federal district court would have jurisdiction to hear a constitutional challenge to the adoption of an explicit court rule, Appendix A, at 34; and the issue in Ktsanes was whether a Rule of the Illinois Supreme Court was, on its face, unconstitutional. Thus, had plaintiff gone directly to federal district court, without submitting his application for admission to the Illinois Supreme Court, the Tenth Circuit would presumably agree that the federal district court would have jurisdiction to hear the case. What is of particular significance in Ktsanes is that such was not the course chosen by the plaintiff in that case. Rather than proceed directly in federal court, plaintiff first submitted his application to the Illinois Supreme Court, seeking an exemption from the rule; and his application was denied. Thereafter plaintiff brought his federal action, in which he challenged the constitutionality of the denial of his application. In upholding the jurisdiction of the federal district court to hear the case, the Seventh Circuit

in Ktsanes rejected the very same arguments made and found persuasive thus far in the case at bar, necessarily including the proposition that the district court "is without subject matter jurisdiction to review a final order of the Colorado Supreme Court denying a particular application for admission to the Colorado Bar." Appendix A, at 34 (emphasis in original).

For the reasons above-stated and those previously asserted in the Petition For Writ of Certiorari and the Supplemental Brief In Support of Petition For Writ of Certiorari, Petitioner respectfully requests the Court to grant his Petition For Writ of Certiorari.

Respectfully submitted,

Jonathon B. Chase
University of Colorado
School of Law
Boulder, CO 80309
COUNSEL FOR PETITIONER

OF COUNSEL:

Albert T. Frantz
7180 West 14th Avenue
Englewood, Colorado